CITY OF BELLEVUE CITY COUNCIL

Summary Minutes of Regular Session

June 16, 2003 Council Chambers 8:00 p.m. Bellevue, Washington

<u>PRESENT</u>: Mayor Marshall, Deputy Mayor Degginger, and Councilmembers Creighton,

Davidson, Lee, and Noble

ABSENT: Councilmember Mosher

1. Call to Order

The meeting was called to order at 8:06 p.m. by Mayor Marshall, who presided.

2. Roll Call, Flag Salute

Upon roll call by the City Clerk, all Councilmembers except Mr. Mosher were present. Dr. Davidson led the flag salute.

(a) Recognition of Departing Board and Commission Members

Mayor Marshall noted a brief reception was held prior to the Regular Session to recognize a group of outgoing Board and Commission members. She thanked Desiree Leigh, who served on the Arts Commission until May 2003.

Utilities Assistant Director Brad Miyake thanked the following retiring Environmental Services Commission members: Robert Boscole, James Dexter, and Dr. Donald Sherrard.

Parks and Community Services Director Patrick Foran thanked Diana Thompson, Michael Yantis, and Ann Young for their service on the Human Services Commission.

Assistant City Manager Myrna Basich recognized Pegi Barthelow and Lois Fox for serving on the Library Board. Both served as Chair at some point during their tenure.

Planning and Community Development Director Matt Terry introduced and thanked the following Planning Commission members who have served since the mid-1990s: Patricia Sheffels, Robert Steed, and Stephanie Warden.

Transportation Assistant Director Kris Liljeblad recognized Larry Shannon for his 10 years of service on the Transportation Commission.

Mayor Marshall reflected that the City is losing a great deal of collective wisdom with the departure of these Board and Commission members. She regrets the loss of these kind, generous, and dedicated community servants but knows they will continue to contribute in another capacity. Mrs. Marshall emphasized that City Council could not perform its duties without the expertise and advice of our Boards and Commissions.

3. Communications: Written and Oral

Mayor Marshall read the rules for Oral Communications and explained that Council cannot hear comments in reference to Agenda Item 9(a), a Limited Public Hearing regarding latecomer assessments, during this time.

Lori Riordan, Assistant City Attorney, reviewed the rules for the Limited Public Hearing, which is considered a quasi-judicial proceeding. These proceedings represent matters in which Council makes a decision regarding the rights of specific interested parties under the City's regulations. Councilmembers must act as judges and maintain fairness and impartiality. If members of the public wish to write, email, or leave a voicemail message about this or any other quasi-judicial matter, they should direct their comments to Myrna Basich, City Clerk. Communications must be received by 1:00 p.m. on the Wednesday before the Council meeting in which the matter is to be considered. This allows the City Attorney time to review the materials to ensure they comply with Council's rules. Under Council's rules, a Councilmember will not be able to discuss pending applications if contacted directly.

- (a) Scott Leonard described how skyways in urban environments encourage pedestrian movement and increase pedestrian choices. He encouraged Council to consider the following factors as they review the feasibility of downtown skybridges: aesthetics, locations, hours of operation, access to street level, public vs. private access, and whether to allow commercial operations in the skybridges. Mr. Leonard feels Bellevue Way is an ideal location for a skyway to connect shopping areas. He suggested providing pedestrian access from a future skybridge to Bellevue Art Museum and the Pedestrian Corridor.
- (b) Tom Woodworth, Schnitzer Northwest, asked Council to direct the Planning Commission to consider a City Code amendment on the FAR/retail exemption for downtown Bellevue. He described plans for a new development on the superblock surrounding Meydenbauer Convention Center. The development represents a departure from traditional retail development by drawing on the outside experience and connecting to pedestrian walkways. Schnitzer requests amendment of the code's FAR incentive program to exempt both first and second level retail spaces that contribute to the outdoor pedestrian environment, as well as spaces fronting outdoor walkways within a superblock.

- (c) Sheldon Arakaki, a freeholder candidate in the May 20 election, thanked Council for the opportunity to participate in the democratic process. He enjoyed meeting and talking with citizens about issues and looks forward to future involvement in city government.
- 4. Reports of Community Councils, Boards and Commissions: None.

5. Report of the City Manager

City Manager Steve Sarkozy asked staff to provide an update on Bellevue 50Fest activities. Ron Langley, Public Information Officer, noted we are halfway through the city's 50th year. He recognized major sponsors of 50Fest events including The Boeing Company, King County Journal, PACCAR Inc., and the City of Bellevue. Approximately \$204,000 in cash donations have been received, largely due to Mayor Marshall's fundraising efforts. An additional \$100,000 of in-kind donations and \$283,000 in community contributions designated for efforts other than 50Fest but in recognition of Bellevue's 50th anniversary have been received.

Neighborhood celebrations are planned throughout the summer with 37 groups already confirmed and 19 expressing an interest. The City will provide a 50Fest "Party in a Box" for neighborhood parties which include a custom-decorated cake, a banner, tee shirts, hula hoops, disposable cameras, posters and pins. The City will process the film and return photographs to the neighborhood while also retaining photos for the City's use. Mr. Langley encouraged citizens requesting the Party in a Box to contact Patricia Knight at (425) 452-7917 or via email at 50fest@ci.bellevue.wa.us.

Mr. Langley highlighted additional upcoming events including the best annual 4th of July celebration to date with fireworks, laser shows, a performance by the Bellevue Philharmonic, and a giant birthday cake. He thanked PACCAR for a recent financial commitment to help publish a 100-page time line history book. A motorama is scheduled for August 23 in Downtown Park. The 50Fest web site is www.bellevue50fest.com.

Mayor Marshall thanked Karen Klett and the Bellevue Historical Society for initiating 50th birthday planning, John Valaas and Anne Taylor for co-chairing the 50Fest Citizen Committee, Brenda Frost for her leadership with event planning, and Ron Langley for his overall coordination of the year-long celebration.

6. Council Business

Dr. Davidson attended the Regional Water Quality Workshop and a meeting of the Water Resource Inventory Area 8 Forum.

Mr. Noble attended meetings of the Puget Sound Regional Council (PSRC) Transportation Policy Board and Eastside Transportation Partnership. He announced a community picnic planned for June 28 in Bridle Trails Park and encouraged the public to attend.

Mr. Lee attended an annual DUI drill at Sammamish High School. He commended Bellevue's public safety personnel for their participation in the presentations.

Mr. Degginger attended Cascade Water Alliance meetings to finalize a water supply contract with the City of Seattle.

Mayor Marshall announced that construction on the new NE 4th Street overpass is underway. She thanked citizens for their patience during construction, which is scheduled for completion around the end of the year.

Mr. Creighton, who serves on the Seafair Board of Directors, said a half marathon and 5K fun run is scheduled in Bellevue on July 6 as a Seafair/50Fest event.

7. Approval of the Agenda

- Deputy Mayor Degginger moved to approve the agenda, and Mr. Lee seconded the motion.
- The motion to approve the agenda carried by a vote of 6-0.
- 8. Consent Calendar
- Mr. Noble moved to approve the Consent Calendar, and Mr. Lee seconded the motion.

Dr. Davidson requested pulling the May 27 meeting minutes for amendment.

- The motion to approve the Consent Calendar, as amended, carried by a vote of 6-0, and the following items were approved:
 - (a) Minutes of May 9, 2003 Special Meeting (no quorum) Minutes of June 2, 2003 Study Session Minutes of June 2, 2003 Regular Session
 - (b) Motion to approve payment of claims for the period ending June 10, 2003, and payroll for the period May 16 through May 31, 2003.
 - (c) Resolution No. 6864 authorizing amendment of the Clear Point LLC health and welfare benefits consulting contract to provide for development of online enrollment services for health and other benefit programs.
 - (d) Ordinance No. 5446 amending Ordinance No. 5414 and increasing the amount appropriated for the 2003 Community Development Block Grant (CDBG) funds in the Operating Grants and Donations Fund from \$1,010,000 to \$1,153,675 to reflect the actual amount of revenue received from the U.S. Department of Housing and Urban Development and repaid loans from the CDBG-sponsored Home Loan Repair Program, and clarifying that the revenues generated by the Home Loan Repair Program may be used for additional home loan repairs.
 - (e) Resolution No. 6865 authorizing the City Manager to execute Amendment No. 1 to the Consultant Agreement with Entranco Engineers, Inc. on CIP Plan No. PW-

W/B-68, 156th Avenue SE – North of Lake Hills Boulevard to SE 24th Street. This amendment covers the final design of the contract plans, specifications, and estimates to complete the trail/boardwalk section on the east side of 156th Avenue SE from SE 11th Street to SE 16th Street. (Discussed with Council on May 5, 2003.)

- (f) Ordinance No. 5447 amending the 2003-2009 Capital Investment Program (CIP) Plan by reallocating a projected balance of funds in CIP Plan No. PW-R-128, Forest Drive Improvements; amending the project name, description/scope, schedule, and budget of CIP Plan No. PW-W/B-69, NE 24th Street Northup Way to 130th Avenue NE Pre-Design Analysis; and creating a new project, CIP Plan No. PW-W/B-70, 140th Avenue NE Pathway Improvements. (Discussed with Council on April 28 and May 12, 2003.)
- (g) Ordinance No. 5448 authorizing and providing for condemnation of easement rights over Parcel 9099 (Spooner) and Parcel 9092 (Evans) for CIP Plan Nos. W-68, Water Service Extensions, and S-30, Sewer Service Extensions, for the 184th SE Water and Sewer Extension Project.
- (h) Resolution No. 6866 authorizing execution of an amendment to the Professional Services Agreement with Preston Gates & Ellis LLP for legal services through completion of appeals brought in the case of Gontmakher v. City of Bellevue, Court of Appeals No. 52376-7.

Amendment of Minutes:

Dr. Davidson suggested revised wording on page 5 of the minutes of the May 27, 2003 Extended Study Session as follows:

Dr. Davidson reiterated his concern that specific merits of proposals should be discussed later in the docket Comprehensive Plan amendment process.

- Mr. Degginger moved to approve the May 27, 2003 meeting minutes as amended, and Mr. Creighton seconded the motion.
- The motion to approve the May 27, 2003 meeting minutes, as amended, carried by a vote of 6-0.

9. <u>Public Hearings</u>

(a) Limited public hearing on Hearing Examiner's recommendation, on remand, regarding the appeal of Rodney Bonebright et al regarding the "latecomer" assessments formulated by the Transportation Department for the improvements by Gold Creek Homes.

Lori Riordan, Assistant City Attorney, explained the rules for the limited public hearing on Hearing Examiner's File No. AAD-02-234, the appeal of Rodney Bonebright et al regarding proposed road improvement latecomer agreement assessments. The matter is before the City Council on the recommendation of the Hearing Examiner that the proposed reimbursement agreement be approved with two amendments: 1) all assessments on the west side of the road should be reduced by \$12.80 per front foot, and 2) the assessment of the Bonebright property should be reduced to an amount equal to or less than the benefit received from the construction of the road.

This limited public appeal hearing is limited to the issues raised by the recommendations of the Hearing Examiner based on the Examiner's ruling on the motions for summary judgment prior to the date of the scheduled hearing on the proposed latecomer agreement and the recommendations of the Hearing Examiner after this matter was remanded to staff for further study of the appropriate method of assessment. The hearing is confined to the record made before the Hearing Examiner and only parties to the appeal and their representatives may participate.

After Council opens the hearing, the parties will have an opportunity to present oral argument based on the Hearing Examiner's record. The appellants will proceed first and have a total of 15 minutes for their argument. If the appellants wish, they may reserve a portion of their time for rebuttal argument to be used upon conclusion of the respondents' presentation. After opening argument by the appellants, the respondents will have a total of 15 minutes for argument.

Ms. Riordan said Council may ask questions of any party or of staff, or of any other person about the matters contained in the record. New material not contained in the record which was made before the Hearing Examiner may not be presented. After all argument is presented and after the Council has asked any questions it may have, Council will have the opportunity to deliberate and render a decision.

If Council determines that the appellants have produced sufficient evidence to support the conclusion that there is an error or defect in the proceedings, and or that the recommendation of the Hearing Examiner is not supported by a preponderance of the evidence, it may remand the matter to the Hearing Examiner to conduct a hearing and make a recommendation of the merits. Or Council may modify the recommendation and remand the matter to the Transportation Department, or it may close this hearing to further consider the record prior to making a final decision on the recommendation.

If the Council finds no error or defect in the proceeding, nor any factual basis for remanding the matter to the Hearing Examiner, it may accept the recommendations of the Hearing Examiner and deny the appeal.

Chris Dreaney, Development Review Manager (Transportation Department), provided background information and described the Hearing Examiner's recommendation. The Cougar Ridge East Preliminary Plat was approved in January 2001. In February 2002, the Cougar Ridge developer, Gold Creek Homes, requested that the City establish a reimbursement process for offsite roadway improvements. Staff presented the issues associated with assessment reimbursement contracts to the City Council in July 2002, and Council directed staff to proceed

with an ordinance providing for such a process. Later that same month, staff mailed notice of the proposed reimbursement contract to affected property owners with information about the process and how to request a hearing.

Council approved Ordinance No. 5405 on August 5, 2002, authorizing the City to enter into assessment reimbursement contracts. During that same month, all of the affected property owners requested a hearing on the proposed latecomers assessment. The Hearing Examiner held a pre-hearing conference on September 11, 2002, and on November 6 the Hearing Examiner issued an Order on Motions for Summary Judgment in which he recommended that assessments be made using a Special Benefits Analysis. On March 3, 2003, Council heard the recommendation and then modified the recommendation and remanded the question of the assessment methodology to the Transportation Department. In response to that Council direction, staff examined several possible assessment methods and analyzed the advantages and disadvantages of each. These are detailed on page 100 of the Hearing Examiner report in Ms. Dreaney's April 2, 2003, memo to the Hearing Examiner.

Ms. Dreaney noted her testimony regarding the alternate methods on pages 43-48 of the hearing transcript. In addition to the proposed front footage method, the methods examined included assessment per lot, per trip generation, per lot size, and reflecting actual construction costs for each lot. Ms. Dreaney's memo discusses the pros and cons of each method and concludes that the proposed front foot method is the most reasonable and practical method.

The remand hearing convened before the Hearing Examiner on April 16 and was continued to April 22 and May 7. On May 19, 2003, the Hearing Examiner issued his Findings of Facts, Conclusions of Law, and Recommendation. The Hearing Examiner recommended that the City Council approve the proposed reimbursement agreement, as proposed by Gold Creek Homes, with two amendments. The first amendment is to reduce all assessments on the west side of the road by \$12.80 per front foot. The second amendment is to reduce the Bonebright assessment to an amount equal to or less than the benefit received by the property from the construction of the road. Ms. Dreaney said Transportation Department staff concur with the first amendment but disagree with the second for the reasons detailed in her June 10, 2003, memo to Council.

- Mr. Noble moved to open the public hearing, and Mr. Degginger seconded the motion.
- The motion to open the public hearing carried by a vote of 6-0.

Ms. Riordan explained that the parties to this appeal are Rodney Bonebright et al, appellants, and Gold Creek Homes (the proponent of the latecomers agreement) and the Director of the Department of Transportation, who together are the respondents.

Argument by Appellants

Marsha Martin, land use attorney with Foster, Pepper and Shefelman, spoke on behalf of Cam West. She asked to be notified after 7 ½ minutes to allow testimony by Sara Slatten (Cam West), Rodney Bonebright, and Bart Walton. Ms. Martin said Cam West and other property owners have asserted from the beginning that this process has been legally defective. Mr.

Walton filed a Motion for Summary Judgment in September 2002 asking for dismissal of the process, and Cam West joined in that motion raising multiple issues. The only issue ruled upon as being recommended to the Council was the special benefits study, which Council has already considered. The remaining issues were denied by the Hearing Examiner and therefore could not be brought before Council until tonight.

Ms. Martin said the entire process should be terminated due to two fundamental legal flaws, which are discussed in her June 11 letter to Council and the attached briefing. She said the process did not follow Bellevue City Code, Chapter 1462, and the authorizing state statute, RCW 3572. These are both quoted on page 5 of the June 11 letter.

Ms. Martin noted that Ms. Dreaney presented Council with the factual chronology, indicating that the road improvements were completed in the fall of 2001. At that time, the City had not adopted an authorizing ordinance for reimbursement contracts and did not do so until August 2002. The process was not initiated until almost a year after the road was completed. Ms. Martin said the first fundamental legal error is that there is no contract between the City and Gold Creek, and there cannot be a contract between the City and Gold Creek to construct these improvements because they are already built. This is an important point because the City's authority to assess property either presently or in the future is dictated by statute. The City cannot cause assessments to be imposed upon real property without expressed statutory authority.

Ms. Martin briefly summarized the authorizing statute, RCW 3572.010. It states that a city may contract with owners of real estate for the construction or improvement of street projects. There is no mention of reimbursement in RCW 3572.010. Sub-section .020 mentions reimbursements and states that a contract may provide for the partial reimbursement under certain conditions. She noted this is optional and not mandatory. The City's ordinance adopted in August 2002 mimics the language from the statute with one minor exception. It requires the underlying contract with the owners for construction of the improvement and it says that such contracts shall provide for reimbursement in accordance with the statute.

Ms. Martin emphasized that the road was completed in the fall of 2001. Once the road was built, there could not be a contract. Ms. Martin said there can be no compliance with state law or with the Bellevue ordinance.

Ms. Martin said the Hearing Examiner's November 6 Order on the Summary Judgment did not address the statutory language or the Bellevue ordinance. She said the Examiner essentially concluded, contrary to the language in the statute, that you cannot create a contract until the road is built because the costs are unknown. Ms. Martin described reimbursement contracts in other cities. Bellingham requires a public facilities agreement in which the developer contracts with the city to build the improvement and then, as a second part, a developer reimbursement agreement is established. Lynnwood has a similar two-step process.

Ms. Martin referenced Attachment A of her June 6 letter, which quotes from Municipal Research and Services Center about both road and utility latecomer agreements. She noted that Mr. Carson, on behalf of Gold Creek, quotes this in his own brief on page 101 of the record. She

quoted briefly from the information and reiterated the need for an underlying contract. Ms. Martin referenced page 190 of Attachment A and noted that recovery contracts, sometimes called latecomer or reimbursement agreements, requires that the developer first enter into an agreement with the City before constructing improvements. She said this did not occur in this case. In the November 22 Motion for Reconsideration, the Hearing Examiner addressed this issue again and concluded that the contract was initiated when the City approved the plat. Ms. Martin asserted that this is a faulty legal conclusion. She said the reimbursement process is invalid for the fundamental reason that there can be no compliance with the Bellevue code and the statutory requirements.

Ms. Martin said the second fundamental legal error occurred because the City Council did not pass an ordinance specifically requiring the improvements that Gold Creek constructed as a condition of developing that property. She noted the Woodcreek case, discussed in detail in her written materials and in the briefing on the record, which held that general ordinances do not meet the statutory test. For the record, Ms. Martin reasserted the need for a special benefit analysis.

Sara Slatten, Cam West Development, noted the potential assessment of \$250,000. She said there is still some uncertainty about the assessment considering the fact that Cam West's development will not take vehicle or other access onto 166th Way. She reviewed the proposal for a single-family planned unit development (PUD) consisting of the former Hosseini, Exsterstein, and Ulman properties. Vehicular access is being taken from SE 66th Street, which is an internal street to the Cougar Ridge West community, now called the Fairwind community. During the Fairwind entitlement process, the City, in contemplation of additional development occurring on the Albright properties, required that a road stub be terminated at the Exsterstein parcel in anticipation of future development. There is currently a bus stop at the entrance of Fairwind, roughly a block away, which is acceptable to serve any future students that would potentially live on the Albright property.

Ms. Slatten said Cam West's proposal has been submitted to the City for review and received tentative approval that the access proposal meets traffic and fire standards. She said the road improvements associated with 166th Way will not benefit the appellants' properties. She asserted the improvements have created a negative impact to properties because the parcels are situated considerably lower than the new street.

Rodney Bonebright said the parties were initially told there would be no surprises throughout this process. He recalled his testimony in the previous hearing in which he discussed how the road was not consistent with what he would have been required to build. The developers built a raised road with a vault underneath, which was expensive and maximized the potential of Gold Creek's development. Mr. Bonebright said he should not be required to pay for improvements that maximized their potential. He asserted that cross-examination of the engineer hired by Gold Creek indicated it was not necessary or required to raise the road.

Mr. Bonebright said if a benefit analysis is to be conducted, it should determine the benefit from the road built directly in front of his property. It should not be based upon the entire road because the ordinance does not have anything to do with his compensating for the entire road. It

has to do with everybody paying their portion. If a benefit analysis is to be done, Mr. Bonebright would like to be able to talk to that person because he has already expended a great deal of money and time trying to overcome the problems that the road created for him, including the fill he brought in to mitigate the problem. He said the person who conducts a special benefit analysis might incorrectly come to the conclusion that no problem exists, because Mr. Bonebright has already spent the time and money to alleviate the problem.

Mr. Bonebright said Gold Creek has portrayed the latecomer assessment as similar to a sewer and water latecomer reimbursement. He noted that sewer and water latecomer agreements do not constitute a taking of property because City ordinance requires that all property owners in Bellevue are responsible for extending utilities to the peripheries of their property. Requiring latecomers in these instances is legitimate, because it is reimbursement for required work. However, a road latecomers agreement is different because there is no obligation to extend the road to the peripheries of the property, and in fact, Cougar Ridge East did not extend the road to the peripheries of the property. They came down to where their access was and then they stopped. Mr. Bonebright said Gold Creek extended the road only as far as they had to for their development. Upon the development of his property, Mr. Bonebright said he would only be required to extend the road to gain access to his site, which could be as little as 30 feet. In order for this ordinance to pass the same legal test of sewer and water, it must carry the same obligations of construction.

Mr. Bonebright feels his obligations for sewer and water are clear and dictated by ordinance. However, there is no clear obligation for him to build 150 feet of road. Any reimbursement must be based upon what he would have been required to build. Mr. Bonebright recalled the previous hearing in which he reviewed what was done along his property line and Gold Creek's request for reimbursement. He is being asked to pay for improvements to utilities, sidewalks, and retaining walls, none of which he has on his property.

Bart Walton said he owns property with Michael Roberts. He explained that many property owners, including Michael Roberts and himself, did not receive any notice of the proposed improvements until almost one year after completion of the construction project. The City of Bellevue did not contract with property owners for improvements at any time prior to or during the construction project. Mr. Walton said a prior contract is a fundamental requirement of any reimbursement proposal according to city and state law. He said property owners did not receive prior notice of the construction project and had no opportunity be involved in the process.

Mr. Walton said the law requires that projects subject to reimbursement must allow for a certain amount of public scrutiny and debate. He asserted that a deal was made between the City and a developer without any involvement from the property owners who are actually being asked to pay for the project. He feels the reimbursement scheme is legally flawed and sets a poor precedent for the citizens of Bellevue.

Responding to Mayor Marshall, City Clerk Myrna Basich indicated two minutes remaining for the appellants. Ms. Martin asked staff to reserve the time for rebuttal.

Argument by Respondent

Brent Carson spoke on behalf of Gold Creek Homes. He noted the Hearing Examiner went through a legal analysis, reached conclusions on each of the issues discussed by the appellants, and ruled against them, and in Gold Creek's favor, on each of those issues. The Hearing Examiner ruled there is no requirement for an ordinance that specifically required the road project. The Examiner is clear in saying that the City has ordinances in effect that require road improvements such as this, and those ordinances are adequate.

Mr. Carson said the Examiner concluded there is no requirement to have prior notice and a public hearing process regarding the design of roads. He said there is no requirement that a request for a latecomers agreement precede construction of a road. He noted Council's approval of the ordinance, indicating the intent to allow Gold Creek to proceed and come back with a request for entering into the contract after the road improvements were built.

Mr. Carson said there is nothing in the statute or City Code requiring a contract before the road improvements were built. The only issue he sees, and his only disagreement with the Hearing Examiner's recommendations, relates to the assessment methodology for Mr. Bonebright's property. Mr. Carson said the record clearly indicates the road was built strictly to meet the City's standards and the conditions that existed on the site. He noted the testimony of Tom Uren, civil engineer, regarding the City's road standards, sight distance requirements, storm water regulations, riparian corridor requirements, and stream and fish passage requirements, all of which established the road's design as being the minimum necessary to meet City standards. The civil engineer testified that Mr. Bonebright would have been required to build essentially the same or similar road improvements based on the City's standards.

Mr. Carson noted that Mr. Bonebright will pay nothing if he does not develop his property for 15 years. If he develops his property, however, he should reimburse Gold Creek for his fair share cost of the road improvements. Mr. Carson said Mr. Bonebright makes the point that there is no code requirement for road improvements across the frontage of private property. Mr. Carson read from Bellevue City Code, section 1460.110B: "Complete street frontage improvements shall be installed along the entire street frontage of the property at the sole cost of the permitee as directed by the review engineer." He indicated an exception in the contract which states that if future development occurs and does not create traffic impacts on the road, there is a process in which no assessment will be imposed.

Mr. Carson said he and Ms. Martin developed alternative contract language, which is contained in the record. The language provides that if in the future Mr. Bonebright came in and could establish that there was no need to approve improvements across his entire frontage, there would be a pro rata reduction in the assessment. Mr. Carson said Mr. Bonebright's future development is unknown at this time. Mr. Carson noted the code requirement for improvements across the entire frontage, and he believe the front footage assessment method is fair and equitable.

Mr. Carson noted his letter requesting changes to the Hearing Examiner's findings and conclusions. In Finding No. 14, the Hearing Examiner refers to a special benefits study for Mr. Bonebright's property. Mr. Carson said this issue came before Council in March and was

rejected. He asked Council to revise paragraph 14 of the findings as set forth in his letter. He noted additional suggestions regarding Conclusions 4, 5, 6, 7 and 8. He feels the Hearing Examiner made a fundamental error in going back to the special benefits study approach which he feels was previously rejected by Council.

Mr. Carson asked Council to deny the appeal and to authorize the City Manager to enter into this contract which would apply in the future should any of these properties develop and have traffic impacts affecting the improvements.

Rebuttal by Appellants

Mr. Bonebright noted Mr. Carson's statement regarding a requirement to build full frontage improvements. Mr. Bonebright said full frontage improvements are not required and were not completed by Gold Creek.

Marsha Martin said the Order of Summary Judgment by the Hearing Examiner was merely a recommendation. The City's criteria provides that the Council has the duty to overturn the Hearing Examiner's findings if there has been a substantial error or if the orders are unsupported by the law. She said Council is obligated to consider the legality of this process as a whole. Although Council approved the two ordinances in August of last year allowing a reimbursement process, Ms. Martin feels it was not Council's intent to disregard its own ordinances and state law.

Ms. Martin asked Council to reject the Hearing Examiner's recommendation and terminate this process. If Council is considering approval of the process, Ms. Martin requests that the alternative language developed with Mr. Carson be incorporated into the proposed contract.

Council Questions

Responding to Councilmember Noble, Ms. Martin said conditions are imposed on developments and some developers choose not to go through with a project due to the conditions. In further response, Ms. Martin explained the language proposed for paragraph 1.2, which focuses on the access issue. She and Mr. Carson agreed to language indicating if there is no direct vehicular access to 166th, there can be no assessments on a property. The language addresses the issue of whether a particular development would have been required to provide frontage improvements and if so, to what extent, whereas the existing contract language does not address this issue.

- Deputy Mayor Degginger moved to close the public hearing, and Mr. Lee seconded the motion.
- The motion to close the public hearing carried by a vote of 6-0.
- Deputy Mayor Degginger moved to postpone a decision to a subsequent meeting to allow staff to provide additional information and analysis, and Mr. Lee seconded the motion.
- The motion to postpone a Council decision carried by a vote of 6-0.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 5449 authorizing the City Manager to execute an Amendment to the Interlocal Agreement with King County governing the allocation of additional funds made available from the Conservation Futures Fund, and amending the 2003-2009 Capital Investment Program (CIP) Plan by increasing the Fund appropriation by \$200,000 within CIP Plan No. P-AD-15, Property Acquisition, to reflect the unanticipated revenues. These funds will provide \$200,000 to offset costs associated with the purchase of the McTavish property.
- (b) Ordinance No. 5450 authorizing the City Manager to execute an Amendment to the Interlocal Agreement with King County, Clerk's Receiving No. 15922, governing the allocation of additional funds made available from the Conservation Futures Fund, and amending the 2003-2009 Capital Investment Program (CIP) Plan by increasing the Fund appropriation by \$250,000 within CIP Plan No. P-AD-15, Property Acquisition, to reflect the unanticipated revenues and which will provide \$250,000 to offset costs associated with the purchase of the Rausch property, adjacent to Meydenbauer Beach Park.

Parks and Community Services Director Patrick Foran explained that the intent of both ordinances is to accept grant funds for acquisition of the McTavish and Rausch properties.

Mayor Marshall thanked staff for identifying grant funds for these projects. Mr. Degginger commended the City's efforts to preserve remaining open space in the community.

- Deputy Mayor Degginger moved to adopt Ordinance No. 5449 and Ordinance No. 5450, and Mr. Lee seconded the motion.
- The motion to adopt Ordinance No. 5449 and Ordinance No. 5450 carried by a vote of 6-0.

Mr. Foran noted that the preservation of open space and the acquisition of waterfront properties have been identified as high priorities on community surveys.

12. Unfinished Business

(a) Proposed Scope and Schedule for Study of Downtown Skybridges

Planning Director Dan Stroh recalled that a private developer considering purchase of the stalled Lincoln Square project recently asked Council to study the issue of skybridges in downtown Bellevue. Council directed staff to develop a proposed scope for review of this suggestion. He noted the memo on page 12-1 of the Council packet listing the issues to be explored and analyzed in the consideration of the feasibility of skybridges including effects on the pedestrian environment, aesthetics, and view impacts.

Mr. Stroh explained a similar issue highlighted earlier in the evening during Oral Communications by a representative of Schnitzer Northwest. City Code currently exempts retail uses developed in fulfillment of the requirements of the City's Building/Sidewalk Design Guidelines from counting against a site's maximum permitted floor area ratio (FAR). Eligible uses include street-edge retail oriented to pedestrians with features such as windows, multiple entrances, and canopies for weather protection. Schnitzer is asking the City to expand the exemption to include other types of retail including second-floor retail and retail spaces internal to superblocks. Mr. Stroh said the use itself is not an issue. Rather, the issue is the overall amount of development proposed for the site and whether the special retail FAR exemption should be expanded to include the additional types of retail.

Mr. Stroh noted the proposed accelerated schedule should Council decide to direct the Planning Commission to study both the Schnitzer and the skybridge proposals. The Planning Commission already has a heavy work program for the summer including the review of wireless facilities, Land Use Code amendments, seven site-specific Comprehensive Plan amendments, the Downtown Plan, and critical areas policies. If Council chooses to pursue the new proposals, staff recommends that Council initiate a potential Comprehensive Plan amendment and Land Use Code amendment tonight. If this is the chosen course of action, adoption of the 2003 CPA package will likely be postponed until early next year.

Mr. Noble characterized the skybridge and Schnitzer proposals as an economic vitality issue warranting further study. He acknowledged they are already generating some controversy but he supports a review of the items.

Mr. Noble moved to initiate a 2003 Comprehensive Plan amendment and a Land Use Code amendment on downtown skybridges, and Mr. Lee seconded the motion.

Mr. Creighton concurred with Mr. Noble about the importance of studying the proposals in terms of economic development. He noted similar concepts were studied during the Downtown Implementation Plan Update process and further review of the proposals is consistent with the goals of the Plan.

Planning and Community Development Director Matt Terry elaborated on staff's recommended plan for fitting the issues into the Planning Commission's work program. The Commission would complete its review of the wireless facilities remand issue and then take up the seven site-specific Comprehensive Plan amendments (CPAs) along with the Schnitzer and skybridge proposals. Upon completion of that work, the Commission will begin to address the Downtown Implementation Plan and critical areas policies. The currently programmed 2003 CPAs would likely be adopted early in 2004.

Mr. Lee noted that economic development has always been a high priority for the Council. He is interested in encouraging pedestrian activity in the downtown and providing second-level retail opportunities for the public. He agreed the issues are consistent with the Downtown Implementation Plan.

Dr. Davidson requested clarification on the CPA schedule. Mr. Terry noted that state law allows cities to amend their Comprehensive Plans only once a year. He feels work on the Schnitzer and skybridge proposals, as well as the seven site-specific CPAs, can be completed for adoption of the 2003 CPA package this fall. However, a full review of subarea plan, Downtown Implementation Plan, and critical areas policies cannot be completed in time for the 2003 adoption.

Deputy Mayor Degginger noted the urgency and importance of studying the skybridge proposal, which affects development of a prominent and stalled project in the heart of downtown Bellevue.

- The motion to initiate a 2003 Comprehensive Plan amendment and a Land Use Code amendment on downtown skybridges carried by a vote of 6-0.
- Mr. Noble moved to initiate a Land Use Code amendment on the retail FAR exemption, and Mr. Lee seconded the motion.

Responding to Mr. Lee, Mr. Stroh said the City's bonus system is designed to encourage desired features such as public plazas and pedestrian amenities. Mr. Stroh described the retail FAR exemption as a "super bonus" because it allows a developer to exceed the maximum development allowed by the other bonuses.

Mayor Marshall noted the City's goal to maximize the pedestrian experience in downtown Bellevue as envisioned by both the Comprehensive Plan and discussion of the Downtown Implementation Plan.

- The motion to initiate a Land Use Code amendment on the retail FAR exemption carried by a vote of 6-0.
- 13. Continued Oral Communications: None.
- 14. New business: None.
- 15. Executive Session: None.
- 16. Adjournment

At 9:56 p.m., Mayor Marshall declared the meeting adjourned.

Myrna L. Basich City Clerk

kaw